

1624. February 3. STEVENSON *against* L. CRAIGMILLER.

IN the action betwixt Stevenfon and Craigmiller, whereof mention is made No 24. p. 836. the LORDS found, That an assignee to a sentence obtained by him who was cedent, before the making of the assignation, might by virtue of that assignation, the same being intimated by the assignee, to the debtor, against whom the cedent had obtained the said sentence, in the cedent's own lifetime, execute the said sentence, by letters of horning, pointing, or comprising, at the assignee's own instance, (the said assignation being intimated, before the cedent's decease, to the debtor, as said is,) and that the assignee had no necessity to transfer the said sentence, before he could deduce execution, but that he might lawfully charge, &c. upon the said assignation so intimated, without any transferring, or other action.

Fol. Dic. v. 1. p. 62. Durie, p. 104.

* * Lord Kerse mentions the same case thus :

FOUND by the LORDS, That an assignation intimate before the cedent's decease, is sufficient warrant and title to raise letters of horning, pointing, and comprising, at the instance of the assignee, without transferring of the decret to a bond registrar.

Kerse, fol. 54.

1663. January 22. WALLACE *against* EDGAR.

JAMES WALLACE, as assignee by James Scot, to a decret obtained against John Edgar in Dumfries, having charged thereupon, Edgar suspends and alleges compensation, upon debts due by Scot, the cedent to the suspender, before the intimation of his assignation ; and, therefore, according to the ordinary course, debts due by the cedent, before intimation, are relevant against the assignee, and condescends upon several bonds and decreets against the cedent, assigned to the suspender, before the charger's intimation. The suspender *answered*, That albeit any debt due by the cedent to the debtor, before intimation, will be relevant to compensate against the assignee ; yet that will not extend to sums assigned to the debtor, before the charger's assignation, unless that assignation had been intimate, before the charger's intimation, because the assignation only doth not constitute the suspender creditor, or the cedent debtor, until it be intimate ; and so there being no *debitum* and *creditum*, before the intimation, there can be no compensation, which is *contributio debiti et crediti*. The suspender *answered*, That the assignation constituted the right, and the *creditum* ; but the intimation was only

No 25.

An assignation intimated before the cedent's death, is sufficient warrant without transferring.

No 26.

The cedent is not denuded by his assignation without intimation ; and intimation cannot be considered barely as giving preference in competition ; but as a step of diligence necessary to complete the assignee's right.